

<sup>5</sup>Reply Comments were received from AEP, the United Telecom Council (UTC) and the State of Ohio. AEP filed an Additional Reply Comment to respond to the Reply Comments made by the State of Ohio.

Virginia, Virginia and Tennessee.<sup>6</sup> AEP, which provides support services to American Electric Power Company, Inc., is licensed for one hundred and twenty-five 800 MHz I/LT facilities that, when fully constructed, will provide communications capabilities over more than forty-five thousand square miles.<sup>7</sup> AEP uses its system to dispatch and coordinate inspection, maintenance and emergency response activities.<sup>8</sup>

3. AEP requests (a) that it be allowed to share its system with any public safety agency, Federal Government agency or public service provider,<sup>9</sup> and (b) that any public safety agencies desiring to add their channels to the AEP system be permitted to do so without seeking further authority from the Commission.<sup>10</sup> Under Part 90 of the Commission's Rules, private land mobile radio (PLMR) frequencies in the 800 MHz band are divided into the following "categories": (a) Specialized Mobile Radio, (b) Public Safety, (c) Business, (d) I/LT, and (e) General.<sup>11</sup> As a general matter, entities are licensed on frequencies in the category or categories for which they meet the eligibility criteria. Section 90.179(a) of the Commission's Rules provides that an entity may share its PLMR station only with users that would be eligible for separate authorization to use those frequencies.<sup>12</sup> A waiver of Section 90.179(a) of the Commission's Rules is necessary to permit Public Safety eligibles and Federal Government entities to share AEP's I/LT and Business frequencies and to permit AEP and other public service providers to share Public Safety frequencies.

4. In support of the Waiver Request, AEP states that it has been approached by a number of public safety and local government entities interested in the possibilities of sharing.<sup>13</sup> In addition, AEP attached letters from Pike County, Kentucky, Emergency Communications Service (Pike County) and MedFlight, stating that they are interested in AEP's system because of their respective communications problems.<sup>14</sup> Pike County states that due to the terrain of the area, its current systems do not adequately cover Pike County, and thus put public safety personnel in danger.<sup>15</sup> MedFlight, an aeromedical and critical care ground transport system located in

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<sup>6</sup>Waiver Request at 2.

<sup>7</sup>*Id.* at 3.

<sup>8</sup>*Id.*

<sup>9</sup>Public service providers are non-public safety entities that furnish, maintain, and protect the nation's basic infrastructures which are required to promote the public's safety and welfare. Public Safety Wireless Advisory Comm., *Final Report* 45 (September 11, 1996) (*PSWAC Final Report*).

<sup>10</sup>*Id.* at 8.

<sup>11</sup>*See* 47 C.F.R. §§ 90.615, 90.617.

<sup>12</sup>47 C.F.R. § 90.179(a).

<sup>13</sup>Waiver Request at 10.

<sup>14</sup>*See* Waiver Request, Ex. E (Letter from Pike County Emergency Communications Service (Pike County)), Ex. F (Letter from MedFlight).

<sup>15</sup>*See* Waiver Request, Ex. E (Letter from Pike County).

Columbus, Ohio, states that it covers nearly two-thirds of the state of Ohio and often experiences major communications problems in its attempts to serve such a large area.<sup>16</sup>

5. The Texas Department of Transportation (TxDOT) states in its comment supporting the Waiver Request that the sharing of the 800 MHz systems by the public safety and Federal Government entities promotes the Commission's goal of greater spectrum efficiency for those with limited resources.<sup>17</sup> TxDOT currently shares two such systems in Texas, and states that it has enjoyed cost savings and enhanced communications as a direct result.<sup>18</sup>

### III. Discussion

6. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the grant would be in the public interest and the underlying purpose of the rule would be frustrated or not served by the application to the present case;<sup>19</sup> or that in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>20</sup> We find that AEP has shown that a waiver of Section 90.179(a) is warranted to permit it to share its I/LT and Business frequencies with public safety and Federal Government agencies. However, we are not persuaded that a waiver that would allow public safety agencies to add their frequencies to AEP's system is warranted at this time. Our basis for these determinations is set forth below.

7. *Sharing I/LT and Business Frequencies.* We find that AEP has demonstrated that its first proposal involves unique circumstances. AEP's system, when completed, will be a state-of-the-art dispatch system that covers over forty-five thousand square miles.<sup>21</sup> This area includes some remote rural areas that currently have limited public safety communications infrastructure and where wireless communications are particularly important due to the distances that must be covered and the relative scarcity of wireline communications facility.<sup>22</sup> In addition, we note that

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<sup>16</sup>See Waiver Request, Ex. F (Letter from MedFlight).

<sup>17</sup>Texas Department of Transportation Comments at 1.

<sup>18</sup>*Id.*

<sup>19</sup>47 C.F.R. § 1.925(b)(3)(i).

<sup>20</sup>47 C.F.R. § 1.925(b)(3)(ii) (formerly 47 C.F.R. § 90.151(a)).

<sup>21</sup>See Waiver Request at 2-3.

<sup>22</sup>See Waiver Request at 2; *see also* Report and Plan for Meeting State and Local Government Public Safety Agency Spectrum Needs Through the Year 2010, *Report and Plan*, 10 FCC 5207, 5219 (1995); *PSWAC Final Report* at 30.

denial of the waiver could possibly undermine efforts in the public safety community to develop and establish shared systems that foster interoperability and operational flexibility.<sup>23</sup>

8. We conclude that granting a waiver of Section 90.179(a) under these circumstances would further the public interest. It is our belief that this proposal would provide the public safety agencies in the areas covered by AEP's system to obtain wide-area coverage without incurring the expense of constructing an entire wide area-backbone system.<sup>24</sup> We further believe that granting the waiver will also facilitate communications between public safety agencies and the electric utilities. In this connection we note that utilities and other public service providers support, and sometimes respond before, public safety agencies when an incident occurs.<sup>25</sup> Therefore, we believe interoperability between public safety agencies and public service providers such as utilities promotes effective public safety communications, both daily and in large disaster situations.<sup>26</sup> We have noted the importance of facilitating such interoperability when granting similar requests.<sup>27</sup>

9. Finally, AEP has demonstrated that there are no reasonable alternatives within the existing rules to accommodate the described needs. We note that public safety agencies have special communications requirements, including, among other things, (1) dedicated capacity and/or priority access available at all times (and in sufficient amounts) to handle unexpected emergencies; (2) highly reliable (redundant) networks which are engineered and maintained to withstand natural disasters and other emergencies; (3) ubiquitous coverage within a geographical area; and (4) unique terminal equipment (mobile or portable units) designed for quick response in emergency situations.<sup>28</sup> In addition, the letters from Pike County and MedFlight indicate that the

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<sup>23</sup>The Commission noted the importance of interoperability when it stated, "inability to communicate hinders cooperation and coordination between public safety agencies on a day-to-day basis as well as during emergencies. We believe that the present inability of public safety agencies to communicate with each other is one of the most critical deficiencies in today's public safety communications." The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Notice of Proposed Rule Making*, WT Docket No. 96-86, 11 FCC Rcd 12460, 12469 ¶ 22 (1996) (*Public Safety First Notice*); see Development of Operational, Technical and Spectrum Requirements for Meeting the Federal, State and Local Public Safety Agency Communication Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *First Report and Order and Third Notice of Proposed Rule Making*, WT Docket No. 96-86, 14 FCC 152, 156-57 ¶ 7 (1998); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local public Safety Agency Communication Requirements through the Year 2010, *Second Notice of Proposed Rule Making*, WT Docket 96-86, 12 FCC 17706, 17718-23 ¶¶ 26-36 (1997); *PSWAC Final Report* at 19-20 and 45-48.

<sup>24</sup>See Waiver Request at 5.

<sup>25</sup>*PSWAC Final Report* at 33.

<sup>26</sup>*Id.* at 20, 32-33.

<sup>27</sup>See, e.g., Texas Utilities Services, Inc., *Order*, 13 FCC 4258, 4261 ¶ 7 (WTB 1997); Central and South West Services, Inc., *Order*, 13 FCC RCD 16162, 16167 ¶ 35 (PSPWD 1998); see also H.R. Conf. Rep. No. 217, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess. 572 (1997) (discussing 47 U.S.C. § 309(j)(2) (as amended by the Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3002, 111 Stat. 251)).

<sup>28</sup>*PSWAC Final Report* at 14.

existing systems for those public safety agencies are inadequate for their respective needs.<sup>29</sup> Public safety and public service entities that need technically advanced, wide-area communications services, but lack access to spectrum and sufficient funding for systems that would provide the same benefits as the proposed system, have no reasonable alternative to the proposed system.

10. *Use of Public Safety Frequencies.* Regarding AEP's request that we allow public safety agencies to add their frequencies to AEP's system without further Commission authorization, the Association of Public-Safety Communications Officials-International, Inc. (APCO), a public safety communications organization, asserts that the scarce spectrum designated for public safety should not be made available for non-public safety use, even if it is a shared use.<sup>30</sup> APCO further asserts that the request is premature and open-ended, because AEP failed to provide any specific information as to which public safety licensees will provide access to their frequencies, which Public Safety Pool frequencies will be used and the extent to which non-participating public safety entities may be adversely affected.<sup>31</sup> The State of Ohio also objects to AEP's request that we allow public safety agencies to add their frequencies to AEP's system without further Commission authorization for similar reasons.<sup>32</sup>

11. AEP responds that its sole reason for requesting the waiver is to accommodate the needs and requests of the public safety community.<sup>33</sup> It concedes that it has no current requests to add 800 MHz Public Safety Pool frequencies to its infrastructure, but states that it is very likely that public safety licensees will want to join the AEP system if the waiver of Section 90.179 is granted.<sup>34</sup> The United Telecom Council (UTC), a trade association of which AEP is a member, supports AEP's request for similar reasons.<sup>35</sup> AEP also notes that it does not need the Public Safety Pool frequencies to support its own internal needs.<sup>36</sup>

12. We conclude that AEP's request that we allow any public safety agencies that may decide to utilize AEP's system to add their frequencies to the system should be denied. While we have permitted such Public Safety/Power Radio Service systems in the past, we have done so only at the request of specific public safety licensees to contribute frequencies to such systems.<sup>37</sup>

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<sup>29</sup>See Waiver Request, Ex. E (Letter from Pike County Emergency Communications Service (Pike County)), Ex. F (Letter from MedFlight).

<sup>30</sup>Comments of APCO at 3.

<sup>31</sup>*Id.* at 2-3.

<sup>32</sup>See Reply Comments of the State of Ohio.

<sup>33</sup>Reply Comments of AEP at 3.

<sup>34</sup>*Id.* at 4.

<sup>35</sup>See Reply Comments of UTC.

<sup>36</sup>Reply Comments of AEP at 3.

<sup>37</sup>See State of South Carolina, *Order*, 13 FCC Rcd 8787, 8795 ¶ 14 (WTB 1997); Commonwealth of Pennsylvania, *Order*, DA 99-1756, at ¶ 14 (WTB PSPWD rel. August 31, 1999). Moreover, these requests

Moreover, in allowing such systems we have considered whether the arrangement would result in a net loss of spectrum designated for public safety use.<sup>38</sup> Therefore, we believe that it is most prudent to authorize such arrangements pursuant to a request from specific public safety entities. Otherwise, we would be unable to determine whether a proposed system furthered the public interest. We find AEP's request to be speculative, and we are not persuaded that grant of this portion of its request is warranted under the circumstances presented.

#### IV. Conclusion

13. For the reasons stated herein, we find that AEP has met the burden for waiver of Section 90.179 of the Commission's Rules. This *Order* grants AEP's request for waiver to permit it to share its I/LT and Business frequencies with public safety and Federal Government eligibles on a non-profit, cost shared basis. However, we deny AEP's request that any public safety agencies desiring to add their frequencies to AEP's system, for use by all participants in the system, be permitted to do so without further Commission authorization. The action taken herein serves the public interest in that it will encourage more efficient use of the spectrum and provide improved opportunities for interoperable communications by the public safety and public service community, without the possibility of a net loss of public safety spectrum.

#### V. Ordering Clauses

14. IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 and 90.179 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.179, the Waiver Request filed by AEP on December 3, 1998, IS GRANTED IN PART and DENIED IN PART, as set forth above.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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involved proposals for systems that otherwise might not be constructed, rather than proposals to expand the frequencies of an existing Power Radio Service system.

<sup>38</sup>State of South Carolina, 13 FCC Rcd at 8793 ¶ 9; Commonwealth of Pennsylvania at ¶ 14.